

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26**

B & C, Inc. ¹

Employer

and

**Case Nos. 26-RC-8081
26-RM-452**

General Drivers, Warehousemen & Helpers, Local 89 ²
Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, ³ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: ⁴

All regular part-time yard personnel employed at the Employer's facility at 1200 Corvette Drive, in Bowling Green, KY, excluding all office clerical employees, professional employees, guards and supervisors as defined by the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by General Drivers, Warehousemen & Helpers, Local 89. ⁵

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the full names and address of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. The Regional Directors shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. **North Macon Health Care Facility**, 315 NLRB 359 (1994). In order to be timely filed, such list must be received by **May 10, 1999**, in the National Labor Relations Board, Region 26, 1407 Union Avenue, Suite 800, Memphis, Tennessee 38104-3627.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **May 17, 1999**.

DATED May 3, 1999, at Memphis, Tennessee.

/s/

Gerard P. Fleischut, Director, Region 26
National Labor Relations Board
1407 Union Avenue, Suite 800
Memphis, TN 38104-3627

1. The Employer's name appears as amended at the hearing.
2. The Petitioner's name appears as amended at the hearing.
3. The Employer and the Petitioner filed briefs which have been duly considered.

The Employer is a Michigan corporation engaged in providing yard support services for its affiliate corporation, Allied Systems, Inc. The Employer conducts its operations from Allied's Bowling Green, Kentucky terminal. The terminal is located adjacent to the General Motors Corvette Plant. Vehicles are released from the General Motors plant to the Bowling Green terminal for transportation to automobile dealerships in thirty states. Truck drivers employed by Allied transport the vehicles to the various dealerships. The drivers employed at the Bowling Green terminal are represented by the Petitioner. In addition to the Allied truck drivers, other Allied personnel working out of the Bowling Green facility include Steve Johnson, terminal manager, Donna Webster, operations supervisor and Angela Rayburn, who is responsible for scheduling. The Employer currently employs thirteen employees at the facility.

4. At issue herein is the employment status of the employees employed by the Employer. The Petitioner, in its petition, amended at the hearing, is seeking to represent all regular part-time joint personnel employed at the Employer's Bowling Green, Kentucky facility, which would include approximately ten employees whom the Employer classifies as yard employees and three individuals whom the Employer classifies as security personnel.

Conversely, the Employer contends that since all of its employees are hired for a definite duration they are temporary employees. Accordingly, the Employer contends the petition herein should be dismissed. Moreover, the Employer takes the position that three of the thirteen employees primarily perform duties which make them guards under the Act. Thus, the Employer contends that these employees are statutorily excluded from any unit which might be found appropriate.

The record establishes that the Employer's operation is conducted pursuant to a provision in the collective bargaining agreement between Allied and the Petitioner. The vehicles (corvettes) are retrieved from the General Motors plant from a release gate located adjacent to the rear of the Bowling Green facility. They are inspected and moved onto the yard by the part-time yard employees at issue herein. Since about 1981 the Employer has maintained a program whereby it obtains its work force from the student body of Western Kentucky University (WKU). The Employer places job announcements in the university's newspaper. The handbook which is distributed to all employees sets forth the requirements for employment. Specifically, an applicant for employment must have completed at least one full time semester at WKU. Furthermore, an applicant must be a full time student at WKU and must have a 2.5 grade point average. The record establishes that the Employer has never hired a yard employee who did not satisfy the criteria as set forth in the handbook. Moreover, the record further establishes that continued employment is contingent upon an employee remaining a full time student at

WKU. In this regard, it is undisputed that employees have been discharged for failing to maintain their status as a full time student at WKU. Upon graduation from WKU, the employment relationship terminates. It is undisputed that no employee has ever worked beyond August 1, following his/her graduation from the university.

Upon employment with the Employer employees sign a part-time workers affidavit. By the execution of this document, employees acknowledge they understand they are being retained on a part-time basis and that their services will terminate upon completion of the part-time job for which they are being used. This document is also an acknowledgment that employees understand that their employment will not be construed to be a preliminary to or indication of future employment possibilities either temporary or permanent in nature; and that they will not accrue any company sponsored benefits or any type of seniority.

The record evidence establishes that yard employees retrieve approximately 140 vehicles a day from the release gate. These employees generally work hours consistent with those of the General Motors' employees. The normal schedule for the General Motors' operations is from 6:12 a.m. until 2:42 p.m. Occasionally the Employer's employees work past 2:42 p.m. Ten of the thirteen employees work on the yard and are responsible for inspecting the vehicles once they are retrieved at the release gate. Additional duties performed by these employees include equipping the vehicles with various accessories, such as car mats, manuals and keys and moving the vehicles from the parking bays to the loading line for placement onto trucks for delivery.

The record further establishes that once the vehicles are released to the Bowling Green terminal, Allied is responsible for protecting them from theft and vandalism. Accordingly, the Employer utilizes three of the thirteen employees at issue to generally work week nights from 6:00 p.m. until 6:00 a.m. and on the weekend. The weekend shifts are divided into two twelve hour shifts. These employees are primarily responsible for performing security related duties. It was Terminal Manager Johnson's testimony that in addition to yard duties, most of the yard employees are responsible for keeping the entrance gate locked; performing hourly security patrols and maintaining a security log of vehicles entering and exiting the premises. However, he identified three individuals as being responsible for exclusively performing security related duties. They are Josh Fogle, Tammie Lindsey and Tim Gilbert. According to Johnson, the primary function of employees performing security work is to keep the gate closed and locked and to keep vehicles from being removed or stolen. It is also the responsibility of those performing security duties to ensure that no unauthorized visitors enter the property.

Employees assigned to perform security duties spend most of their time stationed at a desk in the security office. The office has a window which provides a view of the yard gate. These employees are required to perform hourly security patrols of the premises. They are responsible for maintaining a security activity log where they record all activity during their shift. In addition to the foregoing security related duties, security employees are responsible for cleaning all offices and the restroom during their shift. Employees assigned to security duties may occasionally fill in for yard employees during

spring break. According to Johnson, there is no designated security personnel during the day shift.

The record establishes that employees generally begin their employment performing security related duties. They are placed on the yard as positions become available. None of the employees wear uniforms or badges. Nor, do they carry weapons. Aside from limited training by another employee performing security duties, employees do not go through any specialized training before being assigned to perform security related duties. All employees are subject to background checks which include verification of their education status, as well as, criminal record checks.

At the beginning of each semester employees inform the Employer of their class schedules. Work schedules are made to accommodate the class schedules of the employees. Also, in preparing work schedules the Employer considers the seniority of employees. Generally, employees work an average of 28 hours per week. With the exception of employees performing yard duties being paid at a higher wage rate than those performing security duties, all employees receive the same benefits. Despite the references in the part-time workers affidavits to employees not receiving company sponsored benefits or accruing seniority, the record evidence establishes that all employees are entitled to two weeks vacation after one year of employment. Moreover, after completion of 90 days of employment, all employees receive nine paid holidays a year. All employees are given the same employee handbook and are subject to the same work rules and disciplinary policies. All employees report directly to the operations supervisor.

The Employer contends that because the employment of each of the yard employees is certain to end no later than August 1, after they receive their bachelors degree from WKU, they are temporary employees. In support of its argument that the employees should be excluded from voting the Employer relies on *Caribbean Communications Corp.*, 309 NLRB 712 (1992); *Trustee of Stevens Institute of Technology*, 222 NLRB 16 (1976) and *Highview, Inc.*, 223 NLRB 646 (1976). In each of those cases the Board held that certain employees were temporary in status because they were employed for a limited duration and they did not share a community of interest with unit employees. Accordingly, they were excluded from the bargaining unit. The Employer argues that a similar finding is warranted herein.

Contrary to the Employer's arguments, I am persuaded that the record evidence establishes that the yard employees are regular part-time employees who share a community of interest. In so finding, I have taken into consideration the fact that employment for each of the students ceases upon his/her graduation from WKU. Nonetheless, the record establishes that the yard employees enjoy regularity of employment. They work an average of 28 hours a week most of the year. Such a work schedule clearly indicates regular part-time employment and does not constitute sporadic or temporary employment as asserted by the Employer. *See, System Auto Park & Garages Inc.*, 248 NLRB 948 (1980). Furthermore, the Employer has never treated the employees as traditional temporary employees. Employees are provided an employee

handbook upon employment. Moreover, the employees receive company benefits, including vacation and paid holidays. Under these circumstances, the Employer's argument that the employees are temporary must be rejected.

In finding that the yard employees are regular part-time employees, I find merit in the Petitioner's argument that inherent in the concept of temporary employment is the fact that the work being performed, or the position being filled will not be needed at some point in the future. In the instant case, the Employer has utilized students from WKU for approximately 18 years. Thus, regardless of when an employee graduates, the position will be filled by another WKU student who will perform the same duties. Accordingly, based on the foregoing and the record as a whole, I find that the yard employees constitute an appropriate unit.

To be considered a guard within the meaning of the Act, an employee must enforce against employees and other persons rules to protect the property of the employer's premises. *Petroleum Chemicals*, 121 NLRB 630 (1958). The Petitioner contends activities performed by designated security employees are analogous to those in *Shatuck School*, 189 NLRB 866, 77 LRRM 1164 (1971). In that case the Board found the primary duty of the employee at issue was to check fire hazards and not to enforce rules to protect the property of the Employer or the safety of persons on the premises. Thus, the Board concluded the employee was not a guard and included the employee in the unit. However, I am convinced that the instant record amply establishes that individuals employed as security personnel by the Employer are responsible for protecting the vehicles once they are placed on the Employer's premises and warrants a finding that the employees are guards. The fact that the employees at issue also perform general maintenance work does not detract from a finding that they are guards. *See, M.K. Morse Co.*, 302 NLRB 924 (1991) and *A.W. Schlessinger Geriatric Center*, 267 NLRB 136 (1983). Accordingly, I find that employees Josh Fogle, Tammie Lindsey and Tim Gilbert are guards as defined by the Act and will exclude them from the unit.

Although the record establishes that every other Saturday, yard employee Phillip Jason Murrell, performs the same security related duties as the three identified security personnel, the record further establishes that only approximately 10 percent of the total work he performs is actually security work. Thus, Murrell is predominantly employed to perform yard work. Moreover, the Employer does not assert that Murrell's status is similar to the three contested security personnel employees. Under these circumstances, the evidence is inconclusive with regard to Murrell's guard status. Accordingly, I shall allow him to vote subject to challenge.

There are approximately 10 employees in the unit found appropriate.

5. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a Request for Review is filed, unless the Board expressly directs otherwise.

Classification Index

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